

Attorney Docket No.: RU-0130
Inventors: Yurkow and Mermelstein
Serial No.: 09/913,435
Filing Date: February 2, 2002
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REMARKS

Claims 1-5 are pending in the instant application.
Claims 1-5 have been subjected to a Restriction Requirement under 35 U.S.C. §121 and 37 C.F.R. §1.141. The Examiner suggests that the claims of this invention are properly categorized into the following groups:

Group I, claims 1 and 5, drawn to methods of maintaining cells in a selected redox state or stabilizing the redox state of cells with abnormal fluctuations in their redox state, classified in various subclasses of Class 514, depending on the redox clamping agent contemplated.

Group II, claim 2 drawn to a method of sensitizing selected cells to a chemotherapeutic agent known to induce a stress response in cells, classified in various subclasses of class 514, depending on the redox clamping agent and chemotherapeutic agent contemplated.

Group III, claim 3, drawn to a method of treating cancer, classified in various subclasses of class 514, depending on the redox clamping agent and chemotherapeutic agent contemplated.

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Group IV, claim 4, drawn to a method of inhibiting hyperproliferation of cells, classified in various subclasses of Class 514, depending on the redox clamping agent contemplated.

The inventions are suggested to be distinct and unrelated. The Examiner suggests that each method of use may be based on a different mode of action or a different function, and that each method may be practiced independently of the other. Further, it is suggested that claims 1-5 are generic to a plurality of disclosed patentably distinct species comprising redox clamping agents and optionally, a chemotherapeutic agent. Applicants are required to elect a single disclosed species of a chemotherapeutic agent and a redox clamping agent even in the event that this requirement is traversed.

Applicants respectfully disagree and traverse this restriction requirement.

MPEP §803 is quite clear; for a proper restriction requirement, it must be shown (1) that the inventions are independent or distinct AND (2) that there would be a serious burden on the Examiner if the restriction is not required. MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part

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(subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

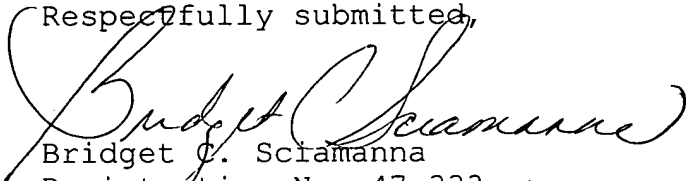
No
All of claims of the instant application relate to the single concept of a maintaining cells in a selected redox state by using a redox clamping agent. Thus, Applicants respectfully disagree that the Groups as set forth by the Examiner are distinct as being novel and unobvious over each other, as required by MPEP § 802.01. Further, a search of literature relating to a compound which maintains cells in a selected redox state would clearly reveal art relating to all of the claims 1-5 of the present inventions. Thus, the inclusion of all of the Groups I through IV in this application would not be overly burdensome. Accordingly, the instant Restriction Requirement does not meet both of the criteria as set forth by MPEP §803 to be proper. Reconsideration and withdrawal of this Restriction Requirement is therefore respectfully requested.

However, in an earnest effort to be completely responsive, Applicants elect Group I, claims 1 and 5; and further elect the species of redox clamping agents as the butyrate sensitizing

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redox clamping agents, with traverse. Further, Applicants believe that the election of Group I has deemed the species election requirement of a chemotherapeutic agent moot. Therefore, Applicants have not elected a chemotherapeutic agent, as claims 1 and 5 are not drawn to the use of any chemotherapeutic agent.

Respectfully submitted,


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no single, disclosed species elected